

REMARKS

Entry of the foregoing, re-examination and reconsideration of the subject matter identified in caption, pursuant to and consistent with 37 C.F.R. §1.112, and in light of the remarks which follow, are respectfully requested.

Claims 1 and 13 have been amended at least partly in response to issues raised in the Office Action. New claims 15-16 have been added directed to preferred features of the invention. Claims 1-16 are now pending in this application.

Claim 1 was objected to for the reason set forth in paragraph (1) of the Office Action. In response thereto, the misspelling of the word "yarn" has been corrected.

Claims 1-6 and 12-14 were rejected under 35 U.S.C. §112, second paragraph, for the reason set forth in paragraph (3) of the Office Action. Reconsideration of this rejection is requested in view of the above amendments and for at least the following reasons.

Claims 1 and 13 have been amended to specify that the fabric of the invention comprises at least one non-woven surface layer comprising crimped fibers having three-dimensional crimps and a yarn count between 0.9 to 5 dtex. Fabrics having one or more non-woven surface layers are described on page 2, line 24 through page 3, line 4 of the specification. Accordingly, the §112, second paragraph rejection should be withdrawn.

Claims 1, 7-9 and 11-14 were rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 4,514,455 to Hwang for the reasons set forth in paragraph (5) of the Office Action. Reconsideration of this rejection is requested for at least the following reasons.

This rejection is based wholly on the premise that the crimped fibers described in Hwang '455 are inherently three-dimensional. Respectfully, applicants disagree. This

reference does not disclose the technique used to crimp the polyester fibers described therein. However, those of ordinary skill are aware that conventional mechanical crimping yields two-dimensional crimps, not three-dimensional crimps. In this connection, note the statement in column 3, line 65 to column 4, line 1 of U.S. Patent 6,109,015 (copy attached).

The 3-dimensional crimp of the present invention is completely different from the 2-dimensional crimp. A 3-dimensional crimp is a crimp which lies at least in two cutting planes and which generates pigtail-shaped loops or curls in the fiber (as described on page 5, lines 16-20 of the present application). The 3-dimensional crimp is particularly obtained by a pneumatic crimping process (see claim 4), which is a process completely different from 2-dimensional crimp processes.

It is well established that "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." *In re Rijckaert*, 9F.3d 1531, 1534, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' *In re Robertson*, 169F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999)." In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the

teachings of the applied prior art." Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. of Pat. Apps. & Inter. 1990). Note M.P.E.P. §2112.

Based on these principles, applicants respectfully submit that there is no basis in fact and/or technical reasoning to reasonably support a conclusion that the allegedly inherent characteristic necessarily flows from the disclosure of Hwang '455. Accordingly, it is requested that the §102 rejection based on this reference be withdrawn.

Claims 1-9 and 12-14 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 3,929,542 to Gehrig et al for reasons given in paragraph (6) of the Office Action. Reconsideration of this rejection is requested for at least the following reasons.

Gehrig '542 discloses a process wherein continuous filaments are extruded, helically crimped and laid on a moving wire belt 60 to form a non-woven web. Note the disclosure in column 2, 1.6-9; col. 1, 1.6-12; col. 10, 1.30-31; col. 11, 1.38; col. 11, 1.64; col. 12, 1.14; col. 12, 1.30. Thus, this reference is directed to non-woven fabrics prepared from crimped continuous filaments as opposed to the fabric of the present claims which comprises at least one non-woven surface layer composed of fibers having three-dimensional crimps (see p. 5, 1.4-8; p. 5, 1.21-24; p. 6, 1.23-26; p. 7, 1.2-5; p. 7, 1.24-25; p. 8, 1.16-18 of the present application). Accordingly, the §102 rejection based on Gehrig '542 should be withdrawn.

Claims 7, 9 and 10 have been rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 3,477,109 to Oonishi et al for the reasons set forth in paragraph (7) of the Office Action. Reconsideration of this rejection is requested for at least the following reasons.

Oonishi '109 is directed to a method of treating a simulated fur made from a spun yarn. The spun yarn may be made of an acrylic composite fiber having three-dimensional coil crimps (see col. 1, l. 25-30). The simulated fur is fabricated by a tufting operation using the spun yarn and a 100% cotton fiber woven base fabric (see col. 3, l. 63-74). This reference does not disclose a fabric having at least one non-woven surface comprising crimped fibers which have three-dimensional crimps. Accordingly, the §102(b) rejection based on Oonishi '109 should be withdrawn.

Claim 10 stands rejected under 35 U.S.C. §102(b) as anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over Gehrig '542 for the reasons set forth in paragraph (9) of the Office Action. Reconsideration of this rejection is requested for at least the following reasons.

Gehrig '542 fails as an anticipatory reference for at least the reasons discussed above, i.e., the fabrics described therein are manufactured from crimped continuous filaments. They are not composed of a surface layer comprising crimped fibers as described in the present claims and disclosure.

Moreover, there is no disclosure or suggestion in Gehrig '542 which would motivate those of ordinary skill to replace the crimped filaments used in the reference with the crimped fibers used in applicants' invention. Thus, the presently claimed invention is unobvious over the disclosure of Gehrig '542.

For these reasons, the alternative §§102/103 rejections should be withdrawn. Such action is respectfully requested.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned at (703) 838-6683 at his earliest convenience.

Respectfully submitted,

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Marked-up Claims 1 and 13

Please replace claims 1 and 13 as follows:

1. (Twice Amended) Fabric [having] comprising at least one [surfaces] surface layer comprising crimped fibers, wherein said fibers have three-dimensional crimps and a [yarn] yarn count of between 0.9 dtex and 5 dtex.

13. (Amended) A method for producing [a] at least one nonwoven surface layer on a fabric comprising introducing crimped fibers having three-dimensional crimps and a yarn count of between 0.9 dtex and 5 dtex during the preparation of the fabric.
